

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 118 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

RABARI RAJUBHAI KAMABHAI

Versus

DISTRICT MAGISTRATE

Appearance:

HL PATEL ADVOCATES for Petitioner

MS PUNANI AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 20/07/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

The petitioner challenges the order of preventive detention dated 2nd September, 1998, made by the District Magistrate, Bhavnagar, under the powers conferred upon him under sub-section (2) of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985

(hereinafter referred to as 'the Act').

The petitioner is alleged to be a 'bootlegger' within the meaning of section 2 (b) of the Act. Five offences have been registered against the petitioner for violation of prohibition law. All the five cases are pending trial before the concerned court. In each of the said offences, a large quantity of country liquor was recovered from the petitioner. Besides, the petitioner is alleged to be indulging himself into eve-teasing and molesting the young girls, extortion etc. His activities are, therefore, held to be prejudicial to the maintenance of public order. Moreover, the police has collected some evidence against the petitioner. The concerned witnesses have made statements before the police in respect of the nefarious activities carried on by the petitioner. The Detaining Authority has recorded his subjective satisfaction in respect of the genuineness of the statements made by the witnesses and of apprehension of retaliation voiced by them. He has also recorded his subjective satisfaction in respect of the need to withhold the names and other particulars of the witnesses under the powers conferred upon him under section 9 (2) of the Act. Further, in all the above referred five criminal cases, the petitioner was arrested and was also released on bail.

The impugned order of detention has been challenged by Mr. Patel, the learned advocate appearing for the petitioner on several grounds. One of them being; some of the documents, which are bail orders in the criminal cases pending against the petitioner, were in English. The petitioner is unable to read or understand English and, therefore, had demanded Gujarati translation of the said documents under his representation dated 4th November, 1998. Even after his his representation and the demand, such Gujarati translation was not furnished to the petitioner.

Though duly served, neither of the respondents has filed a counter-affidavit, nor are the original records made available to the court for its perusal. Thus, the averments made in the petition remain uncontested and uncontroverted. It must, therefore, be believed that some of the documents furnished to the petitioner were in English language and English language is not known to the petitioner. If that be so, the petitioner's Constitutional right to make an effective representation against the order of detention is jeopardised. The continued detention of the petitioner is, therefore, unwarranted.

Petition is, therefore, allowed. The impugned order dated 2nd September, 1998 (Annexure-A to the petition) is quashed and set aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

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JOSHI